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Supreme Court, U.S.
FILED
MAY 29 2001

No. 00-1627

In The

Supreme Court of the United States

RONALD M. BARON,

Petitioner

v.

CITY OF BROADVIEW HEIGHTS

Respondent

On Petition For Writ of Certiorari
To The Supreme Court of the United States

SUPPLEMENTAL BRIEF OF PETITIONER TO PETITION FOR A WRIT OF CERTIORARI

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SUPPLEMENT TO OPINIONS BELOW FILED WITH PETITION FOR WRIT OF CERTIORARI

At the time of filing the Petition for Writ of Certiorari, to wit: April 24, 2001 the Opinion of the Courts below were still unreported. Since that time, the Opinions of the Courts below, to wit: the Opinion of the Ohio Court of Appeals, as set forth in the Appendix to the Petition for Writ of Certiorari has become REPORTED as well as the decision of the Ohio Supreme Court.

The Opinion of the Ohio Court of Appeals is now REPORTED as **CITY OF BROADVIEW HEIGHTS v. BARON,** and cited as *Broadview Hts. v. Baron* (2000), 139 Ohio App.3d 729, 745 N.E.2d 516, 2000 Ohio App. LEXIS 3483 (Ohio Ct. App., Cuyahoga County 2000), Cuyahoga County App. No. 76490.

The Decision of the Ohio Supreme Court dismissing the Appeal because of no substantial constitutional question is now REPORTED as **BROADVIEW HTS. v. BARON,** (2001) 91 Ohio St. 3d 1415, 741 N.E. 2d 142, 2001 Ohio LEXIS 134 (2001); (00-1883 Broadview Heights v. Baron, Cuyahoga App. No. 76490).

The introductory note in the REPORTED decision preceding the syllabus of the Court of Appeals Opinion reads as follows:

"Defendant was convicted in the Parma Municipal Court, Timothy P. Gilligan, J., of menacing, disorderly conduct and telephone harassment. He appealed. The Court of Appeals, Cuyahoga County, Timothy E. McMonagle, J.,

held that: (1) a mistrial and a new trial could be ordered, even though jeopardy attached; **(2) defendant's being precluded from cross-examining state's witness was not prejudicial error;** (3) trial judge's comments did not prejudice defendant; and (4) aggregate term of eighteen months of imprisonment was appropriate sentence. Affirmed.
(Boldface and underline added by Petitioner for emphasis).

The syllabus in the instant case, relevant to Petitioner's Writ of Certiorari and now cited in ***WEST'S KEY NUMBER SYSTEM*** as law in Ohio reads as follows:

4. Criminal Law {West Key Number 661}

A trial court enjoys broad discretion in the admission and exclusion of evidence.

5. Criminal Law {West Key Number 1153(1)}

A trial court's decision on the admission or exclusion of evidence will not be reversed on appeal absent a clear abuse of discretion which materially prejudices the objecting party.

6. Witnesses {West Key Number 271(1)}

In prosecution for telephone harassment, **defendant should have been allowed to cross-examine state's witness,** the administrative supervisor for a city police department, regarding the whereabouts of the original tapes of defendant's allegedly harassing calls to the department and the authenticity of the duplicate tapes that witness provided, **as the cross-examination would have been relevant to whether defendant made the harassing calls to the department on the dates and times in question.**
R.C. 2917.21; Rules of Evid., Rules 401, 611 (B).

7. Criminal Law {West Key Number 1170.5(1)}

In prosecution for telephone harassment, **trial court did not commit prejudicial error in precluding defendant from cross-examining state's witness, the administrative supervisor for a city police department,** regarding the whereabouts of the original tapes of defendant's allegedly harassing calls to the department and the authenticity of the duplicate tapes that witness provided, where dispatchers who took the calls testified that the duplicate tapes were true and accurate recordings of the harassing calls that they received. R.C. 2917.21; Rules of Evid. 401, 611 (B).
(Boldface and underline in the aformentioned West Key Number System are added by Petitioner for emphasis).

PETITIONER'S SUMMARY

The previously unreported opinion of the Ohio Court of Appeals and the decision of the Ohio Supreme Court dismissing the Appeal as not involving any substantial constitutional question are now **REPORTED**. Petitioner contends that the trial court committed constitutional error of the first magnitude in denying or "precluding" Defendant from cross-examining a key witness for the State who had testified at the trial on relevant matters going directly to both the culpability and credibility of the Defendant. Uncorrected, this case will serve as an unfortunate precedent for the proposition that the denial of cross-examination is no longer constitutional error of the first magnitude, even when that denial affects both the credibility and culpability of the accused.

Respectfully submitted,

Joseph Alan Lewandowski, Jr.

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Supplemental Appendix

Evid. R. 401 Definition of "relevant evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Evid. R. 611 (B) Scope of Cross-Examination

Cross-examination shall be permitted on all relevant matters and matters affecting credibility.

R.C. 2917.21 Telephone Harassment (Relevant portions)

(A) No person shall knowingly make or cause to be made a telephone call, or knowingly permit a telephone call to be made from a telephone under the person's control, to another, if the caller does any of the following:

(1) Fails to identify the caller to the recipient of the telephone call and makes the telephone call with purpose to harass, abuse or annoy any person at the premises to which the telephone call is made, whether or not conversation takes placed during the telephone call;

(2) (Omitted by Petitioner)

(3) (Omitted by Petitioner)

(4) (Omitted by Petitioner)

(5) (Omitted by Petitioner)

(B) No person shall make or cause to be made a telephone call, or permit a telephone call to be made from a telephone under the person's control, with purpose to abuse, threaten, annoy or harass another person.

(C)Whoever violates this section is guilty of telephone harassment, a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense involving the same person, recipient or premises. (1995 S 2, eff. 7-1-96; 1980 H 164, eff. 4-9-81; 1972 H 511)